BEFORE THE HONOURABLE KERALA STATE ELECTRICITY REGULATORY COMMISSION

at its office at C.V. Raman Pillai Road, Vellayambalam. Thiruvananthapuram.

FILING NO /2021

CASE No.

IN THE MATTER OF:

Review Petition against KSERC order dated 25th June 2021 in Petition OA No 9/2020 in the matter of truing up of accounts of KSEBL for the year 2017-18.

AND

IN THE MATTER OF:

Kerala State Electricity Board Limited, Vydyuthi Bhavanam, Pattom, Thiruvananthapuram.

Applicant

Chief Engineer
Commercial & Tariff
Kerala State Electricity Board Limited

AFFIDAVIT VERIFYING THE APPLICATION ACCOMPANYING THE REVIEW PETITION AGAINST KSERC ORDER DATED 25th JUNE 2021 IN PETITION OA No 9/2020 IN THE MATTER OF TRUING UP OF ACCOUNTS OF KSEBL FOR THE YEAR 2017-18.

I, **Sasankan Nair C.S**, son of G. Chellappan Pillai, aged 55 years residing at Sasindu, Snehapuri Road, Karimom, Thiruvananthapuram do solemnly affirm and say as follows:

I am working as Chief Engineer Commercial & Tariff, Kerala State Electricity Board Limited, Vydyuthi Bhavanam, Pattom, Thiruvananthapuram, and the petitioner in the above matter and I am duly authorized by the Board to make this affidavit on its behalf. I solemnly affirm at Thiruvananthapuram on this the 22nd day of October 2021 that the contents of the above petition are true to my information, knowledge and belief. I believe that no part of it is false and no material has been concealed there from.

Deponent

Chief Engineer
Commercial & Tariff
Kerala State Electricity Board Limited,
Vydyuthi Bhavanam, Pattom
Thiruvananthapuram – 695 004

VERIFICATION

I, the above-named deponent, solemnly affirm at Thiruvananthapuram on this, the 22nd day of October 2021 that the contents of the affidavit are true to my information, knowledge and belief, that no part of it is false and that no material has been concealed there from.

Deponent

Chief Engineer
Commercial & Tariff
Kerala State Electricity Board Limited,
Vydyuthi Bhavanam, Pattom
Thiruvananthapuram – 695 004.

Solemnly affirmed and signed before me.

TN Omana
22 10 2021

Advocate and Notary:

T. N. OMANA
Advocate & Notary
Thiruvananthapuram Revenue District
Kerala State South India

BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION

In the Matter of:	**Review Petition against KSERC order dated 25th June 2021 in Petition OA No 9/2020 in the matter of Truing Up of accounts of KSEBL for the year 2017-18.**
Petitioner:	**Kerala State Electricity Board Limited, Vydyuthi Bhavanam, Pattom, Thiruvananthapuram**

THE PETITIONER HUMBLY STATES THAT:

1. Hon'ble Commission as per order dated **25th June 2020** in Petition **OA No 9/2020** in the matter of Truing Up of accounts of KSEBL for the year 2017-18 has approved the revenue gap for the year at Rs 84.13 Cr as against the revenue gap of Rs 1331.81 Cr sought to be trued up for the year. The total non-approval of expenses amounts Rs 1247.68 Cr under various heads as summarized below:

Table 1 Summary of disallowances

No	Particulars	Rs. In Cr
1	Cost of Power Purchase	50.52
2	Total Interest & Finance charges	212.93
3	Depreciation	183.15
4	Total O&M Expenses	461.72
5	Other expenses	6.05
6	Claim for achievement of T&D loss reduction	1.10
7	Auxiliary consumption above norms	0.83
8	Interest on unfunded actuarial liability	331.39
9	**Total**	**1247.68**

2. A comparison of the various expenses as per truing up petition based on audited accounts and the order on Truing Up for the year is furnished as **Appendix 1**.

3. KSEBL submits that, while approving the truing up petition based on the audited accounts, Hon'ble Commission was pleased to approve most of the claims preferred by KSEBL. However, Hon'ble Commission, in deviation to the principles followed during the control period, has not considered the actual expenditure furnished by KSEBL in certain instances and KSEBL was not in a position to provide important facts and figures relevant to the subject matter for consideration of the Honorable Commission as the deviation from regulations and principles could be noted only on receipt of the order. Hence,

KSEBL submits this petition before the Hon'ble Commission for the kind review of the order dated 25th June 2021

I. Non approval of power purchase cost against some DBFOO contracts resulted in under approval of power purchase cost of Rs.42.63 Cr.

4. National Tariff Policy 2016 stipulates that all power purchase costs are pass through unless there is a violation in merit order dispatch. Hon'ble Commission has always been approving the power purchase cost based on this statutory principle.

5. It may kindly be seen that:

(a) In the suo motu order dated 17.04.2017, for the year 2016-17 and 2017-18 Hon'ble Commission has not approved the quantum of power sourced from Jindal Power Ltd, Jhabua Power Ltd and Jindal India Thermal Power Ltd and instead approved annual ceiling limit of Rs 4.33 per unit for meeting the shortfall in power requirements during 2017-18.

(b) Subsequently, Honorable Commission vide order dated 22.12.2017 allowed to draw power from these three stations Jindal Power Ltd –Bid II (150 MW), Jhabua Power Ltd-Bid II (100 MW) and Jindal India Thermal Power Ltd (100 MW) .

(c) It is a well settled principle that an order issued by any statutory authority will have only prospective effect. This principle meets the ends of justice as the parties involved gets an opportunity to abide by the order/decision only after the order/decision is available to them. Thus, all courts have refused to implement orders of all statutory bodies with retrospective effect.

(d) In the instant matter, on obtaining the orders of Honorable Commission, on 22-12-2017 allowing drawal of power from these stations, the invoices raised by these generators were being strictly processed by KSEBL in accordance with the provisions of Model PPA , which form part of the Model Standard Bid documents notified by MoP under Section 63 of Electricity Act,2003.

(e) Subsequently after the elapse of FY 2017-18 and FY 2018-19 , BALCO rates were considered against the power from these stations as well by Honorable Commission , only for estimation purpose for the next control period from 2018-19 to 2021-22 in the MYT order dated 08.07.2019.

(f) Adoption of BALCO rates for approval of power purchase cost of these 3 generators were ordered for the first time only during the proceedings on the fuel surcharge petition for 2019-20 dated 14th February 2020 which was confirmed through orders on review petition dated 14.08.2020. Copy of the order is attached herewith as **Annexure 1.**

(g) KSEBL had fully complied with the decision of Honorable Commission in order dated 14.02.2020, 27.04.2020 and 14.08.2020 by limiting the payment to these generators at the rate of power purchase from BALCO, thereafter.

(h) It may kindly be seen that the MYT order (08.07.2019) as well as order on approval of fuel surcharge (14.02.2020) was issued well after the financial year 2017-18 and 2018-19. Therefore, KSEBL was not at all in a position to comply these orders retrospectively in 2017-18.

(i) KSEBL was not in a position to bring these facts and chronology of events before the kind attention of the Honorable Commission as so far, the Honorable Commission has allowed pass through of all power purchase cost in accordance with the provisions in National Tariff Policy.

(j) Disallowance of Rs. 42.63 Cr for the year 2017-18 has resulted in retrospective application of the decision taken by the Hon'ble Commission in 2020-21.

6. In this connection, KSEBL humbly submits the chronological sequence of and scheduling of power from these stations for the kind consideration of the Hon'ble Commission.

i. KSEBL entered into Power purchase Agreements for the long-term procurement of 865 MW electricity for a period of 25 years from 1st December 2016 and 1st October 2017 with the L-1 and L-2 bidders of Bid-1 and L-1 to L-5 bidders of bid-2 as given below:

PPA based on DBFOO

Sl. No.	Power Supplier	Region	Power (MW)	Tariff (Rs./kWh)	PSA Date	To be supplied from
1	Jindal Power Limited	WR	200	3.60	29-12-2014	Dec-16
2	Jhabua Power Limited	WR	115	4.15	31-12-2014	Dec-16
3	Bharat Aluminium Co. Ltd	WR	100	4.29	26-12-2014	Oct-17
4	Jindal India Thermal Power Ltd	ER	100	4.29	29-12-2014	Oct-17
5	Jhabua Power Limited	WR	100	4.29	26-12-2014	Oct-17
6	Jindal Power Limited	WR	150	4.29	29-12-2014	Oct-17
7	East Coast Energy Private Ltd *	SR	100	4.29	02-02-2015	Oct-17
	Total		**865**			

*Project failed to achieve COD as per PSA

ii. KSEBL on 20-4-2015, filed petition (OP 13/2015) before Hon'ble Commission for the adoption of tariff as per Section 63 of the Electricity Act, 2003. Hon'ble Commission, vide order dated 30-8-2016, approved the PSAs and adopted the tariff of L1 bidders under Bid 1 and Bid 2 namely 200MW from Jindal Power Ltd (Bid1) and 100MW from BALCO (Bid2) and informed that the power purchase from the remaining bidders would be approved after getting remarks from Government of Kerala and approval of the bidding process from Ministry of Power. It was also mentioned that a copy of the order would be submitted to Government of Kerala with a request to communicate their views after duly considering the relevant facts and legal provisions in view of the Government order GO(MS) No.45/2014/PD dated 20-12-2014 (sanctioning the purchase of 865MW of power by KSEB Ltd) on DBFOO basis. Accordingly, KSEBL on 7-9-2016, furnished all required details to facilitate the Government to take a considered decision. On 15-9-2016, GoK sought approval of GoI (Letter No.CA letter No. CA-DBFOO/KSERC / 2016/PD dated 15.09.2016) for the procedure adopted.

iii. In view of failure of monsoon in 2016-17 and the power shortage estimated during the summer months from Feb-2017 to May 2017 and the operationalization of LTA granted by CTU, on 3-11-2016, KSEBL sought the approval of GoK and Hon'ble Commission (on 15-11-2016) for scheduling 115MW power from M/s. Jhabua Power Ltd. (L2 bidder of Bid 1) from December 2016. GoK approved the procurement vide GO (Rt) No.238/2016/PD dated 31.11.2016. Thereafter, Hon'ble Commission vide order dated 22-12-2016 gave provisional approval of the PSA of the L2 bidder under Bid1 ie.115 MW from Jhabua Power Ltd also.

iv. Honorable Commission vide order dated 17.04.2017 (suomotu proceedings) approved procurement of 415 MW of Power (from M/s Jindal India Pvt Ltd (200 MW), M/s Jhabua Power Ltd (115 MW) and M/s BALCO (100 MW). Hon'ble Commission, however did not approve the scheduling of 450 MW of power contracted through DBFOO Bid-II in the suomotu order dated 17.04.2017. Instead, approval was granted to procure 1946.98 MU power from short term markets (at an average rate of Rs 4.00 per unit and transmission charges @ Rs.0.33 per unit) at Kerala periphery (Rs.843.04 Cr) to meet the deficit for the year 2017-18.

v. Later Hon'ble Commission, vide the letter dated 22.12.2017 allowed the petitioner to draw the contracted power under DBFOO Bid II, in view of the order of the State Government vide GO (Ms) No. 22/2017/PD dated 21.10.2017. Hon'ble Commission also clarified that Commission may approve the power purchase proposal including the rate for the pending approvals under DBFOO only after the State Government accords the final approval for the entire power purchase under DBFOO. Based on the above, the petitioner has been scheduling power from these suppliers.

vi. Thus, KSEBL obtained approval for scheduling energy from these three stations (350 MW) during the year 2017-18 and rate of purchase was not approved. Thus, during the year 2017-18 the only rate limitation before KSEBL for power purchase from sources other than the sources approved vide order dated 17.04.2017 was annual average of Rs 4.33 per unit. It may kindly be noted that KSEBL scheduled power for the year 2017-18 duly following merit order dispatch principles.

vii. It is humbly submitted that there was also shortfall in energy availability during 2017-18 from the sources approved vide order dated 17.04.2017 as pointed out in the Midterm review petition. There was reduction in energy from Central Generating stations by 1027.10 MU, reduction of 347.27 MU through long Term contracts and there was reduction in hydro generation by 236.27 MU. This resulted in a total reduction of 1598.41 MU from sources approved vide order dated 17.04.2017 due to the reasons mentioned in para 4.6 of the petition. This deficit along with the deficit identified in the suomotu order had been partly met through procurement from these three stations under Bid II which was approved for scheduling by Honorable Commission vide letter dated 22.12.2017 along with short term procurement. KSEBL was able to procure the deficit quantum of 2668.05 MU at an average rate of Rs.**3.59** per unit. The details are given in table below.

Source	Energy at Kerala periphery (MU)	Cost incl transmission charges (Rs Cr)
DBFOO(Bid II)-350 MW*	**1176.54**	**540.19**
TPTCL	**146.55**	**48.81**
IEX	**554.07**	**207.22**
PXIL	**87.16**	**32.66**
Swap-GMRETL	**132.90**	**2.26**
Overarching	**1.15**	**0.52**
Deviation Settlement Mechanism	**569.68**	**125.12**
Transmission charges		
Total	**2668.05**	**956.77**

***Power purchased through DBFOO contracts not included in the suomotu order but Honorable Commission allowed to draw power later on.**

viii. As can be seen from the table above, 2668.08 MU of energy were procured from the generators and sources other than those considered in the suomotu order dated 17.04.2017 at a total cost of Rs 956.77 crores, translating to Rs 3.59 per unit at Kerala periphery as against Rs 4.33 per unit approved in the suomotu order.

ix. As stated earlier, Honorable Commission had allowed drawal of power from these stations (450 MW) under DBFOO bid –II contract vide letter dated 22.12.2017. Considering the substantial energy deficit, KSEBL had resorted to the power available as per these contracts along with the short-term power procurement from the exchanges. 1176.54 MU was availed from these contracts. Further contracting such huge quantum through short term would have resulted in increase in the power purchase rates through short term contracts and would also result in corridor constraints / non- approval of STOA by SRLDC.

x. While approving MYT for the next 4-year control period from 2018-19 to 2021-22, Hon'ble Commission (vide the order dated 08.07.2019 in OA No. 15/2018) approved the source wise details of the power purchase and cost from various sources including 'Central Generating Stations (CGS)' and also the power purchase under long term contracts from private IPPs. While doing so, Hon'ble Commission did consider entire power schedule from PSAs of Bid-2. However, citing that the required approvals from GoI and State Government was awaited, for estimating the ARR&ERC for the control period, the rate of power from BALCO, the L1 of Bid 2, was considered provisionally by Hon'ble Commission to compute power purchase cost for other generators in Bid 2 (350 MW). The relevant portion of the order is extracted below for ready reference:

"***Purchase of power from projects under DBFOO***

5.104Hence the Commission has considered scheduling power from the three projects of Bid-2, ie., 100 MW of power from M/s Jindal India Thermal Power Ltd, New Delhi, 100 MW of power from M/s Jhabua Power Limited and 150 MW of power M/s Jindal Power Limited for the limited purpose of estimating the ARR&ERC for the control period. Since the required approvals from GoI and State Government is still awaited, the Commission is constrained to use the rate equivalent to the cost of power from Balco, which is the L1 of Bid 2.

The Commission emphasizes that this consideration is only for the purposes of estimating the cost of power provisionally in the ARR and shall not be construed as an approval of the power purchase, rate or of the PPA itself as per Section 63 of the Act which can be considered only after the fulfilment of conditions specified by the Commission in its order dated 31-8-2016.

xi. It may kindly be noted that Honorable Commission adopted the Balco rate, which was the L1 of Bid 2, for the purposes of estimating the cost of power provisionally in the ARR for the control period subject to the condition that once the State Government accords the final approval for the entire power purchase under DBFOO, Commission may approve the power purchase proposal.

xii. Further, Hon'ble Commission vide the letter dated 06.08.2019 has communicated to KSEB Ltd the month wise details of the energy schedule approved from each of the CGS and long-term contracts including these 3 generators under DBFOO Bid II during the MYT period from 2018-19 to 2021-22. The said schedule was provided to enable KSEBL to file petition for recovery of fuel surcharge on a quarterly basis invoking the powers under Regulations 86 and 87 of KSERC (Terms and conditions for determination of Tariff) Regulations, 2018.

xiii. KSEBL had already appraised Govt. of Kerala on the matter for expeditious decision on the PSAs awaiting approval of Hon'ble Commission. KSEBL vide letter dated 7-11-2019 to GoK has clarified various matters sought by Government**.** Meantime, MoP, Government of India vide letter No. 23/12/2018- R & R dated 11-12-2019 had clarified that the "Govt. of Kerala/KSEB Ltd may take action as appropriate in consultation with KSERC on the deviations". This clarification obtained from MoP has also been brought to the attention of the Hon'ble Commission on 26-12-2019. It was submitted that no deviation with regard to RFQ, RFP and PSA issued by KSEBL was observed by the Hon'ble Commission but for the evaluation process that followed. MoP vide letter dated 6-8-2014 after vetting the entire bid documents had not pointed out any deviation in the bid documents other than on fuel option which was also rectified.

xiv. As per the Regulation 86 of the KSERC(Terms and Conditions for determination of Tariff)Regulations, 2018, the difference between the actual cost of power purchase and the approved cost of power purchase on account of change in cost of fuel shall be computed for each quarter with respect to the month wise quantity of power purchase as approved by the Commission in the Aggregate Revenue Requirement of the distribution business/licensee, based on merit order. Further, every distribution business/licensee shall, within thirty days after the close of each quarter, submit to the Commission a petition with all relevant details required for the approval of the amount of fuel surcharge to be adjusted from the consumers and the rate and period of such adjustment.

xv. Accordingly, KSEBL filed petition for the approval of the fuel surcharge for the period from April 2019 to June 2019(First quarter) on 27.09.2019 and from July 2019 to September 2019 (Second quarter) on19-11-2019 and requested Hon'ble Commission to approve the additional financial liability incurred by KSEBL, amounting to Rs72.75Cr for the first quarter and Rs. 57.98 Cr for the second quarter. KSEBL had filed separate petitions for recovering fuel surcharge for all the four quarters of 2019-20 based on this concept.

xvi. Of these, Honorable Commission was pleased to issue orders on petitions relating to first and second quarters of 2019-20 as per orders dated 14.02.2020 and 27.04.2020. Honorable Commission did not admit the fuel price variation in respect of three IPP stations viz Jindal India Thermal Power Ltd- 100 MW, Jhabua Power Ltd- 100 MW and Jindal Power Ltd -150 MW, which were contracted by KSEBL based on tenders invited under DBFOO basis in 2014. It was also mentioned in the order that actual tariff paid by KSEBL for procuring power from these three stations were much higher than that of L1 bidder and during truing up of accounts for the respective financial years, the excess amount incurred for procuring power from these three generators shall not be considered, unless KSEBL gets the approval for power purchase from Government of India for deviations from the guidelines and on getting the approval of Government of Kerala on the entire power purchase under DBFOO.

xvii. KSEBL filed separate review petitions on the two orders dated 14.02.2020 and 27.04.2020 before this Honorable Commission on 30.03.2020 and 04.06.2020 respectively for allowing the additional fuel cost incurred thereunder. It was also requested for issuing orders on drawal of power from these contacts if Honorable Commission is not inclined to allow the cost.

xviii. Honorable Commission rejected the prayers of KSEBL on both the petitions together as per order dated 14.08.2020.In the case of request for issuing orders on drawal of power, KSERC directed KSEBL that this cannot be considered through review petition. Accordingly, KSEBL filed separate petition on the same. In strict compliance of the orders of the Honourable Commission dated 14.08.2020, KSEBL has limited payment from August 2020 onwards towards power purchase from the above mentioned three stations limiting to the rate of M/s BALCO at Kerala periphery.

xix. In the separate petition No 5/2021 dated 12.11.2020, KSEBL prayed before Honourable Commission for final and conclusive order in the matter of the drawal of power contracted against the PSAs of the three generating stations on 09.11.2020. Public hearing on the same was scheduled on 09.02.2021 but was adjourned by Honorable Commission.

xx. It may please be noted that Honorable Commission has directed to limit the payment towards power purchase from the above mentioned three stations to the rate of M/s BALCO at Kerala periphery during 2020-21 only. KSEBL is of the view that extending the decision retrospectively back to 2017-18 is legally not correct as there was no decision regarding the limiting rate for 2017-18 in the Suo motu order applicable for the year 2017-18, except average annual rate of Rs 4.33/unit for meeting the power deficit through short term contracts.

7. In view of the above submission, it is respectfully submitted that ARR orders of the Hon'ble Commission are the basis for KSEBL to plan and manage its activities. In the present context, the power purchase activities of KSEBL for 2017-18 was managed on the basis of directions contained in the Suo motu order dated 17.04.2017 and the order dated 21.10.2017. . However, Hon'ble Commission adopted the directions issued later on in February, 2020 while truing up account for 2017-18. Hence considering the fact that the average rate of power purchase through short term contracts including the power purchase from the above mentioned three stations during the year was Rs.3.59 per unit, which was well within the approved rate of Rs.4.33 per unit and these purchases were done after fully observing merit order dispatch; KSEBL humbly requests before the Honorable Commission to review the order and approve Rs. 42.63 Cr under power purchase cost for FY 2017-18.

II. Non approval under interest & finance charges (Rs.212.93 Cr)

8. Item wise details of variance in approval and claim is furnished below:

Table -2 : SUMMARY OF I&F FY 2017-18 (Rs Cr)

Sl No	Particulars	Trued up claimed	Trued up by KSERC	Variance
1	Normative interest	317.70	271.63	46.07
2	Working capital interest	24.30	14.51	9.79
3	Carrying cost	444.49	344.75	99.74
4	Carrying cost on current year gap	61.12	3.80	57.32
5	Total	**847.61**	**634.69**	**212.92**

9. It may be kindly seen that the variance in approval arose under interest on normative loan, working capital interest and carrying cost. Among these, the approval in respect of interest on working capital and carrying cost has deviated from the provisions in the MYT Regulations and / or regulatory precedence during the control period.

a. Interest on working capital for SBU T

10. True up was sought for approval under SBU T amounting to Rs. 17.23 Cr but Hon'ble Commission approved Rs. 8.04 Cr. Receivables for one month considered in working capital requirement for SBU T as per the petition was not considered on the grounds that there is no actual flow of transfer cost from SBU D to SBU T.

11. A comparison of working capital interest claimed by KSEBL and approved by the Hon'ble Commission is furnished below:

Estimation of interest on working capital for SBU-T (Rs Cr)		
Particulars	Approved	Claimed
O&M expenses for one month	26.12	31.04
Cost of maintenance of spares 1% of historical cost	46.29	47.19
Receivable for 1 month	0.00	77.00
Total	72.40	155.23
Less Security deposits	0	0
Total Normative Working Capital Requirement	72.40	155.23
Base rate as on 1-4-2016	9.10%	9.10%
Interest rate on working capital	11.10%	11.10%
Interest on working capital	8.04	17.23

12. Hon'ble Commission did not consider one month receivable while determining the quantum of working capital requirement mentioning that there is no actual cash flow of transfer price. Relevant portion of the order is extracted below for ready reference.

3.106 The Commission has worked out the interest on working capital as per the provisions of the Regulations. Accordingly, the working capital is estimated as shown below:
O&M expenses for SBU-T - Rs.313.39 crore
Historical cost of assets - Rs.4628.56 crore
Receivable for 1 month - Not considered as there is no actual flow of transfer cost
Base rate - 9.10%
Interest rate for working capital - 11.10%

13. Regulation 33 (1) (d) of the Tariff Regulations, 2014 extracted below, sets the principles under which the approval of working capital interest for SBU T.

> 33 (1) (d) In the case of transmission business/licensee the working capital shall comprise of, -
> (i)operation and maintenance expenses for one month; plus
> (ii)cost of maintenance spares at one per cent of the historical cost; plus
> (iii)receivables equivalent to transmission charges for one month calculated at target availability:
> Provided that the amount, if any, held as security deposits except the security deposits held in the form of bank guarantee from users of the transmission system shall be reduced while computing the working capital requirement.

14. Proviso to Regulation 33 (1) (c) (iii) in respect working capital applicable to SBU G however, clearly mentions that receivables are not permitted to be considered if power is supplied by the generation business to the distribution business. Relevant portion of the Regulation is extracted below for ready reference.

Provided that in the case of own generating stations, no amount shall, in the computation of working capital in accordance with these Regulations, be allowed towards receivables, to the extent of supply of power by the generation business to the distribution business."

15. It may kindly be noted that there is no such stipulation applicable to SBU T in Regulation 33 (1) (d). It is respectfully submitted that exclusion of 1-month receivables from the tabulation is squarely against the provisions contained in the Tariff Regulation. It is a settled position that the Regulatory Commission is also bound by its own Regulation and therefore deviation from Regulation is not legally correct.

16. Even though the transfer price is not transferred as such to SBU T, all financial requirements of SBU T including working capital requirement were being promptly addressed to by the corporate office of KSEBL. The share of working capital borrowing cost attributable to SBU T is also duly included in the trifurcated Profit and Loss Account of KSEBL.

17. In view of the above, Hon'ble Commission may kindly review the decision and consider Rs 63.81 Cr being 1/12th of the approved transfer price (Rs.765.77 Cr/12) as one month receivable and grant additional working capital interest of Rs. 7.08 Cr (Rs.63.81 Cr X 11.10%)

b. Carrying cost on approved revenue gap

18. Hon'ble Commission, as per paragraph 5.267 of the order has determined the carrying cost on the approved revenue gap till the beginning of 2017-18 i.e., 01.04.2017 at Rs. 344.75 Cr.

19. Hon'ble Commission has ascertained excess Security deposit of Rs.1019.70 Cr while determining working capital interest of SBU D. Relevant portion of the order is reproduced below for ready reference:

> *5.191 The excess security deposit available after meeting the working capital requirements is Rs.1019.70 crore. As per KSEB Ltd, the excess of security deposit over the working capital needs is Rs.1183.56 crore. Since the amount of security deposit held by SBU-D is substantial and more than the normative working capital requirement, the working capital requirement is negative. Hence no interest on working capital is allowed for SBU-D. Rs.1019.70 crore is in excess held by KSEB Ltd without any additional interest liability. The same is available as a source of funds to KSEB Ltd.*

20. While approving carrying cost, Hon'ble Commission considered this amount (Rs 1019.70 Cr) along with GPF as available for meeting approved and unbridged revenue gap. Relevant portion of the order is extracted below for ready reference:

> *5.269 In this context, the Commission is also required to examine the availability of funds to KSEB Ltd for meeting the revenue gap. It is to be noted that, the Commission is allowing the interest on Provident Fund as part of the interest and financing charges. Further, balance security deposit after meeting the working capital requirements is also available. Hence while deciding the outstanding revenue gap for which carrying cost is to be allowed, the availability of funds in the form of GPF & security deposit needs to be considered and reduced from this requirement. Accordingly, as shown above, the balance revenue gap after accounting for GPF and balance security deposit is Rs.3640.41 crore at an interest rate of 9.47%.*
>
> *5.270 The carrying cost for the year 2017-18 is estimated as Rs.344.75 crore*

21. It is respectfully submitted that the norms for determining the working capital requirement of SBU D is clearly specified in Regulation 33 (e) of Tariff Regulation, 2014 and the same has been extracted by the Hon'ble Commission in Paragraph 5.187 of the order. Regulation 33 (e) is reproduced below:

(e) In the case of distribution business/licensee the working capital shall comprise of, -

(i) operation and maintenance expenses for one month; plus

(ii) cost of maintenance spares equal to one-twelfth of the sum of the book value of stores, materials and supplies at the end of each month of the financial year; plus

(iii) receivables equal to the expected revenue from sale of electricity for two months at the prevailing tariff:

Provided that the following amounts shall be reduced while computing the working capital requirement:

(i) the amount, if any, held as security deposits except the security deposits held in the form of Bank Guarantee from users of the distribution system and consumers; and

(ii) the amount equivalent to the cost of power purchase for one month, based on the cost of power purchase approved by the Commission:

Provided further that the amount equivalent to the cost of power purchased for one month corresponding to the quantity of electricity supplied from the generating station owned by the distribution licensee shall not be deducted:

Provided also that for distribution business/licensees who supply electricity to their consumers on prepaid metering system, no interest on working capital shall be allowed.

22. The Regulation 33 or any other Regulation does not deal with excess Security deposit, if any, and the treatment of such excess amount. Further, Hon'ble Commission did not consider such excess security deposit while truing up the accounts for the earlier years of the control period viz. 2015-16 and 2016-17. Since the Hon'ble Commission considered excess security deposit as a source of fund to finance regulatory asset for the first time, that too not being provided in Tariff Regulations, 2014, KSEBL may kindly be permitted to submit the following for the kind consideration of the Hon'ble Commission.

(a) Working capital requirement as per Regulation 33 (e) consider 2 months receivables. The outstanding arrears, mostly receivable from Government departments and due to litigation by private parties amounts to Rs.1779.60 Cr as on 31.03.2018. KSEBL is forced to borrow funds in order to make good the delayed remittance by consumers by incurring interest, which is not allowed as pass through in tariff. At the same time, Interest collected on account of delayed or deferred payment of bills are considered as Non-Tariff Income as per Regulation 84 (2) (xvi). Thus, the cost of funds required to meet the outstanding arrears is not allowed as a pass through in the MYT period. At the same time, the interest paid by the defaulting consumers is passed on, which requires a review during the upcoming control period to ensure recovery of genuine costs.

(b) Tariff regulation considers two months receivables equivalent to the expected revenue from sale of electricity . Honorable Commission may please note that out of the revenue from sale of electricity; 62.27 % of the total revenue is from bimonthly billed consumers and the remaining 37.73 % is from monthly billed consumers. Code 122(10) of Supply code stipulates that the bill shall be prepared and delivered to the consumer within three days from the date of meter reading and that the due date of payment is fixed as the tenth day from the date of meter reading or any day thereafter. As per clause 131(3) of Supply code, the disconnection date is after fifteen days from the due date specified in the bill.

(c) The period between metering to payment ranges from 10 to 25 days. Thus, on an average, the period for obtaining collection is 17.5 days (10+15/2) from the date of meter reading. In the case of monthly billed consumers, collection materializes in 47.5 days (30+17.5) and in the case of bimonthly consumers the period for receiving the receivables is 77.5 (60+17.5) days. Thus, the weighted average for the period of receiving the receivables in actual case is (62.27*77.5/100)+(37.73*47.5/100)=67 days.

(d) Working capital requirement is reduced to the extent of Power purchase cost for one month and at the same time, rebate obtained for power purchase is considered as non-tariff income. In this instant, rebate is obtained for making payment before the due date and additional interest incurred by KSEBL to settle power purchase bills before due date is also not allowed as pass through. This also requires a reconsideration in upcoming control periods.

23. Therefore, KSEBL may humbly submit before the Hon'ble that:

(i) If the Hon'ble Commission decides to consider available surplus security deposit for meeting approved revenue gap, then suitable realistic estimation of working capital requirement may be made to arrive at the exact quantum of working capital. Further, delayed payment interest (Rs. 45.08 Cr), rebate on power purchase (Rs. 132.92 Cr) may be excluded from the non-tariff income.

(ii) It is humbly requested that such redetermination of working capital assessment and income directly connected to it may be examined and suitably incorporate the same in the Tariff Regulation for the next control period. In respect of the last year of the control period 2015-2018, Hon'ble Commission may kindly review the decision from considering the available surplus security deposit for meeting approved revenue gap in line with the truing up orders issued for the first 2 years of the control period viz 2015-16 and 2016-17. This will meet the ends of justice as the estimated surplus security deposit is inadequate to cover the requirements arising from longer period for realization of revenue, outstanding arrears and prompt payment for availing rebate.

24. Hon'ble Commission assumed its office in November, 2002 and started issuing orders from 2003-04 onwards. The first MYT Regulation was notified by the Hon'ble Commission for an initial 3-year control period from 2015-16 to 2017-18. It may kindly be seen that during the period from 2003-04 to 2014-15, capital works to the tune of Rs.9213.04 Cr had been executed with out any net additional borrowings (negative 1394.84 Cr during the period). Internal cash accruals including additional security deposit, Overdraft, internal accruals through prudent fund management etc enabled KSEB to execute capital works without further borrowing. Hon'ble Commission during the period had also trued up revenue gap to the extent of Rs.5457.11 Cr till 31.03.2014. The benefits of capital works without any additional borrowings were passed on in its entirety to consumer only because of efficient utilization of all the internal resources with minimal overdrafts.

25. It is respectfully pointed out that recognition of once utilized resources again on theoretical grounds, that too ignoring the past operations can only result in grave financial difficulties in long run. Therefore, it is humbly requested that the decision to factor funds, which does not exist, to meet approved revenue gap may kindly be considered since this Hon'ble Commission is duty bound to ensure financial sustainability of KSEBL.

III. Claim for achievement of T&D loss reduction

26. Out of total energy savings of 183.52 MU on account of T& D loss reduction actually achieved during 2017-18, KSEBL claimed its share of 122.35 MU @ Rs.4.02 per unit amounting to Rs. 49.27 Cr. Hon'ble Commission was pleased to admit claim of KSEBL for 122.35 MU but approved Rs. 48.17 Cr by considering Rs.3.938 per unit. The rate per unit adopted by the Hon'ble Commission was based on approved average power purchase cost for 2017-18(paragraph 5.95 of the order). Energy cost considered for the purpose was Rs.7346.56 Cr (after excluding Rs.50.52 Cr on DBFOO and INOX and Rs.1.59 Cr towards energy not billed)

27. KSEBL, in this petition is seeking review of non-approval power purchase to the tune of Rs. 42.63 Cr (power purchase from DBFOO contracts approved at the rates applicable to Balco). It is humbly requested that the Hon'ble Commission may kindly re determine APPC after considering Rs. 42.63 Cr under power purchases. Thus, energy cost for the year would be Rs.7389.19 Cr (Rs.7346.56 Cr + Rs.42.63 Cr) and APPC at Rs. 3.96 per unit (Rs.7389.19 Cr/18657.42 MU). Considering Rs. 3.96 per unit, Hon'ble Commission may kindly approve Rs. 48.45 Cr against Rs. 48.17 approved in true up.

IV. Excess Auxiliary consumption 9.56 MU (Rs.0.83 Cr)

28. Hon'ble Commission penalized KSEBL towards excess auxiliary consumption amounting to Rs. 0.83 Cr towards 9.56 MU at average hydro generation cost of Re. 0.91 per unit. As per paragraph 2.20 of the order, it has been stated that the Hon'ble Commission has consistently been disallowing excess cost of additional auxiliary consumption from the allowable expenses of SBU-G. However, Hon'ble Commission, in Truing up order for 2016-17 as per OA 12/2018 dated 14.09.2018 has deliberated the issue and approved actual auxiliary consumption owing to the deficient monsoon as extracted below:

Analysis and decision of the Commission

2.21 In their truing up petition, KSEB Ltd has stated that the gross hydro generation is 4319.08 MU and the auxiliary consumption is 26.97MU, which is 0.62% of the total hydro generation. It is to be noted that 2016-17 was a monsoon short fall year. The inflow for the year was only 3703.06MU which is about 3000MU lower than anticipated. The Regulations provides for benchmark percentage auxiliary consumption based on gross generation for the major stations and that of small hydro projects, respective regulations shall be applicable for the determination of allowable auxiliary consumption.

2.22 The Commission notes that in 2016-17, the actual generation from hydro stations was only 4319.08MU which shows that the year was a monsoon deficient year. The average hydro generation during normal monsoon years will range from 6000 to 7000MU. In comparision with the average generation, the actual generation in 2016-17 is comparatively low. In such circumstances, it is not fair to allow auxiliary consumption based on the percentage of actual gross generation during low hydro years. Hence, the Commission is of a considered view that the auxiliary consumption may be allowed considering the normal year. In 2015-16, the total hydro generation was 6639MU, which can be considered as a normal hydro year. The auxiliary consumption approved by the Commission for 2015-16 was 25.91MU. In comparison with the figures of 2015-

16, the actual auxiliary consumption in 2016-17 is 26.97%, which almost same as that of a normal monsoon year. ***Hence, based on the justification mentioned above, the Commission allows the actual auxiliary consumption for hydro stations for the purpose of truing up.***

29. In the order for 2016-17, Hon'ble Commission notes that actual hydro generation during normal monsoon years will range from 6000 to 7000 MU and actual generation in 2016-17 was 4319 MU. On similar grounds, it may kindly be noted that even though net hydro generation in 2017-18 was at 5468 MU, better than 2016-17, such generation was also below normal 6000-7000 MU range as stated by the Hon'ble Commission earlier.

30. It may kindly be noted that auxiliary consumption, by definition includes the energy consumed by the auxiliary equipment in the generating station including switch yard of the generating station and transformer losses within the generating station. However, KSEBL has only been reporting considering metered consumption in the auxiliary panel of the generating station. Thus, the reported figures, which formed the basis for MYT control period 2015-2018, are much lower than the norms stipulated by Hon'ble CERC etc. Such metered consumption mainly comprises of motor load and heater load. These equipments are part of machine, which are designed (including rating) and supplied by the equipment manufacturer, for its normal functioning. Therefore, consumption by such equipment is beyond the control of any operator and any attempt to control it would invariably result in the adverse functioning of the equipment.

31. It is further submitted that the normative values in the Tariff Regulation, 2014 were determined on the basis of the data furnished by KSEB based on only meter reading.

32. In view of the above, Hon'ble Commission may kindly approve actual auxiliary consumption in line with the decision in Truing up for 2016-17 since actual hydro generation in 2017-18 was less than normal range.

V. Observation regarding Rs 1.26 Cr towards M/s Jhabua Power Ltd –I (115 MW)

33. Honorable Commission vide order dated 25.06.2021 in the matter of truing up of petition for the year 2017-18 observed that:

"*It is also noted that even in the admitted claims the amount is not fully paid in the case of Jindal-I and excess payments in the case of Jhabua-I. In the revised statement, in the case of Jhabua-I* the actual payment is more than the provisions made. *Considering this discrepancy, the Commission is approving only the admitted claims as per the petition and not the actual payments made, subject to the conditions made in the Order dated 22-12-2016."*

34. In this regard KSEBL may kindly be permitted to submit that there was neither any excess payment nor discrepancy as observed by the Hon'ble Commission. The following facts are submitted for the kind consideration of the Hon'ble Commission:

35. The Power Supply from M/s. Jhabua Power Ltd commenced from December 2016. The power purchase cost as per the annual accounts for the year 2016-17 was Rs 52.24 Cr, which is the amount as per the invoices raised by the generator. KSEBL claimed the amount as per accounts and Honorable Commission was pleased to approve the same vide true up order for the year 2016-17. Out of this Rs 5.53 Cr was not admitted by KSEBL towards fixed charges and variable charges for the year 2016-17.

36. For the year 2017-18, KSEBL purchased 770.67 MU from M/s Jhabua Power Ltd and the total power purchase cost as per accounts was Rs 346.54 Cr, which is same as the invoice raised by the generator for the period. Against this, a sum of Rs. 57.13 Cr claimed by Jhabua power Ltd towards fixed charges and variable charges was not admitted by KSEBL for the year 2017-18. This was mainly due to difference in value of station heat rate taken by the utility and generator for the computation of fixed charges and fuel charges and the difference in methodology adopted for the calculation of fuel charges as well as other claims. M/s Jhabua Power Ltd has filed a petition before Hon'ble CERC on the matter of computation of fixed charges. Further M/s Jhabua Power ltd has claimed fixed charge on account of non-availability of concessional fuel in certain months, the details for which was not provided by the Generator and hence were not admitted by KSEBL. The firm had claimed (Rs 1.26 Cr) as deemed availability for the month of October 2017 vide supplementary invoice dated 8th May 2018. Subsequently KSEBL admitted Deemed availability claim of M/s Jhabua as per the provisions of PSA after ascertaining actual shortage in fuel supplied by the fuel suppliers, Mahanadi Coalfields Ltd and South Eastern Coalfields Ltd.

37. Thus, due to the reasons mentioned above, Rs 62.27 Cr was not admitted by KSEBL towards fixed and variable charges for 2016-17 and 2017-18 for Jhabua Power Ltd under Bid- I on account of variation in fixed charges and variable charges due to this difference in methodology of computation. However, the expenses have been provided in the books of accounts of KSEBL.

38. KSEBL, in the truing up petition for 2017-18, claimed the admitted amount only and thus, a sum of Rs. 62.67 Cr claimed by Jhabua power Ltd (115 MW under Bid I) was not claimed by KSEBL since it was not actually remitted. Un admitted amount comprise of Rs 57.13 Cr for 2017-18 and Rs 5.53 for 2016-17. Thus, KSEBL furnished the claim in true up petition for the year 2017-18 as Rs 283.87 Cr.(Rs 346.54-57.13-5.53)

39. KSEBL requested that the Hon'ble Commission may kindly consider truing up of these unadmitted claims, if materializes on a later date. Thus, KSEBL sought true up only to the extent of actual remittance made to M/s Jhabua Power Ltd (115 MW under Bid I) amounting to Rs 283.87 Cr {Rs 346.54-(57.13+5.53)} against the claim of M/s Jhabua Power Ltd amounting to Rs 346.54 Cr. But, actual payment for 2017-18 at the time of filing of true up petition was Rs 289.407 Cr (Rs 346.54-57.13). As against the actual claim of Rs. 289.407 Cr ,only Rs 283.87 Cr was sought for true up ,Rs 5.53 of unadmitted amount pertaining to 2016-17 was already allowed by Honorable Commission for the true up of 2016-17.

40. Subsequently Honorable Commission sought details of actual remittance towards power purchase through DBDFOO contracts. KSEBL furnished the details vide letter dated 20-10-2020 as Rs 290.72 Cr. The amount was higher by Rs 1.2588 Cr (from Rs 289.407 Cr) as the same was admitted by KSEBL during November 2019 towards Deemed availability claim of M/s Jhabua on account of shortage in fuel supplied by the fuel suppliers, Mahanadi Coalfields Ltd and South Eastern Coalfields Ltd in October & November 2017 and from February to March 2018 as per provisions of PSA as detailed below:

41. As per Clause 21.4.2 of the PSA, the Utility is liable to pay Fixed Charges for Availability corresponding to 70% of the non-availability due to fuel shortage and the firm is not liable to pay Damages for this non-availability. Accordingly, KSEBL had admitted Deemed availability claim of M/s Jhabua on account of shortage in fuel supplied by the fuel suppliers, Mahanadi Coalfields Ltd and South Eastern Coalfields Ltd in November and December 2017 and from February to April 2018 along with the monthly bill raised by them. The supplier had claimed Deemed Availability for the month for October 2017 vide supplementary invoice dated 8th May 2018. But KSEBL had not admitted the same in view of non-submission of details in time. In view of the above, KSEBL requested them to certify that the concessional coal as per the FSA against the PSA executed with KSEBL is being fully utilized for supplying power to KSEBL. Subsequently, M/s. Jhabua Power furnished supporting documents in the form

of periodic reconciliation sheets signed with MCL from Dec 2016 to March 2018 and from December 2016 to December 2018 with SECL. Since the reconciled sheets furnished were not legible and the quantity of fuel reconciled with MCL was not specified in the sheets, KSEBL could not analyze the data furnished and the matter was intimated to the firm. There after M/s Jhabua Power Ltd furnished legible copies of reconciled sheets from SECL and MCL for the period up to March 2018. Subsequently, vide letter dated 17th July 2019, the firm has submitted reconciled sheets from SECL and MCL for the period upto March 2019 and has requested KSEBL to process the deemed availability claims for the financial year 2017-18 and 2018-19.

42. The coal details as furnished by M/s Jhabua Power Ltd have been analysed in detail. It was observed that about 794.026 MU and 1099.43 MU can be supplied from the power plant to KSEBL with the quantum of coal received from SECL and MCL for the financial years 2017-18 and 2018-19. Against this the firm has supplied 814.79 MU and 1275.84 MU from the Jhabua Power plant against PSA 1 and 2 during the financial years 2017-18 and 2018-19, which was reportedly made possible by procuring coal from market and through e auction. It may be noted that the energy to be supplied to KSEBL for the two financial years against the two PSAs at Normative Availability of 90% are 1234.79 MU and 1610.30 MU respectively. The calculations are summarized as follows:

PSA 1 and PSA 2	**2017-18**		**2018-19**	
	SECL	**MCL**	**SECL**	**MCL**
Quantity of coal supplied, MT	7,00,913.89	2,10,774.30	9,31,512.21	3,80,843.30
KSEBL share, 50.58%	3,54,522.25	1,06,609.64	4,71,158.88	1,92,630.54
Total MU that can be generated with the received coal, MU	794.026		1099.433	
MU supplied by Jhabua from PSA 1 and 2, other than from alternate source, MU	814.790		1275.837	
Total No. of Units at 90% Normative Availability, MU	1234.791		1610.307	

43. Thus, it was ascertained from the data that there has been deficiency in supply of coal to Jhabua Power Plant during the financial years 2017-18 and 2018-19. Hence KSEBL allowed Deemed Availability on account of shortage of fuel to Jhabua Power for these financial years to be computed as per the following clauses of the PSA.

As per clause 22.7 of PSA 'The Supplier shall at all times maintain a minimum stock of Concessional Fuel and Fuel from AFSA, if any, which is sufficient for full production of electricity from Contracted Capacity for *supply thereof to the Utility for a continuous period of 7 (seven) days (the "Minimum Fuel Stock").*

As per 22.8.2 'In the event of any Fuel Shortage hereunder, the Fixed Charge payable for and in respect of any Non-Availability arising as a result thereof shall be equal to 70% (seventy per cent) of the Fixed Charge computed in accordance with the provisions of Clause 21.4.2'

As per 21.4.2 'Upon occurrence of a shortfall in the Minimum Fuel Stock, Availability shall be deemed to be reduced in accordance with the provisions of Clause 21.5.2 and the Non-Availability arising as a consequence thereof shall, for the purposes of payment of Fixed Charge, be deemed to be Availability to the extent of 70% (seventy per cent) of the Non-Availability hereunder. For the avoidance of doubt, the Parties expressly agree that if Fuel Shortage is caused by an action or omission attributable to the Supplier, it shall not be reckoned for the purposes of computing Availability hereunder. By way of illustration, the Parties agree that in the event the Non-Availability arising on account of shortfall in supply of Fuel is determined to be 50% (fifty per cent), the Supplier shall, with respect to the Non-Availability arising on account thereof in accordance with the provisions of Clause 21.5.2, be entitled to a Fixed Charge as if the Availability is equivalent to 70% (seventy per cent) of such Non-Availability. For the avoidance of doubt, the Parties agree that the Supplier shall not be liable to pay the Damages specified in Clause 21.6.2 if Non-Availability shall arise as referred to in this Clause 21.4.2'.

As per clause 21.5.2 'In the event Fuel stocks decline below the Minimum Fuel Stock, Availability shall be deemed to be reduced proportionate to the reduction in Minimum Fuel Stock, and shall be deemed as Non-Availability on account of Fuel Shortage. Provided that the Utility may, in its sole discretion, Despatch the Power Station for the full or part Non-Availability hereunder and to the extent of such Despatch, the Utility shall pay the full Fixed Charge due and payable in accordance with this Agreement. For the avoidance of doubt and by way of illustration, if the actual stock of Fuel is 80% (eighty per cent) of the Minimum Fuel Stock at the commencement of any day, the Availability for that day shall be deemed to be 80% (eighty per cent) and the Non-Availability on account of Fuel Shortage shall be notified by the Supplier to the Utility accordingly'.

44. Based on the above KSEBL admitted Rs 1.2588 Cr for the year 2017-18 during November 2019 towards M/s Jhabua Power Ltd as per the provisions in PSA.

Sl no	Month	Admissibility to FA given on	Amount claimed by M/s Jhabua Rs	Amount already admitted Rs	Revised Amount Admissible now Rs	Balance released Rs
				-1	-2	(2)-(1)
1	Oct-17	13.11.2017	23,55,02,731	12,08,76,194	15,16,48,289	3,07,72,095.00
2	Nov-17	13.12.2017 & 10.01.2018	27,63,30,050	24,61,58,977	24,01,97,725	-59,61,252.00
3	Feb-18	06.03.2018	26,72,23,847	22,72,03,232	22,15,41,895	-56,61,337.00
4	Mar-18	09.04.2018	29,55,23,565	25,30,41,863	25,25,53,742	-4,88,121.00
5	Apr-18	Annual reconciliation for 2017-18 admitted on 14.05.2018	8,51,46,908	37,77,970	-22,95,645	-60,73,615.00
Total						**12587770.00**

45. Thus, the details admitted for 2016-17 and 2017-18 unadmitted by KSEBL is as follows.

Power Purchase cost of M/s jhabua Power Ltd (Rs cr)								
FY	As per Accounts	True up claim	Actuals	Unadmitted		As per True up order	Unadmitted claims not approved by KSERC	Admitted claims not approved by KSERC
				2016-17	2017-18			
2016-17	52.24	52.24	46.71	5.534		52.24		
2017-18	346.54	283.87	290.663		57.13	283.87	62.670	1.26

46. Hon'ble Commission, while deliberating the matter of power purchase cost approval, it was directed that the claims preferred for true up are to be included in the accounts for the year. In this case, power purchase is accounted in 2017-18, but the entire amount has not been claimed in true up. Hence KSEBL humbly requests before the Honorable Commission to approve the claim of **Rs 1.26 Cr,** on account of shortage in fuel supplied by the fuel suppliers, Mahanadi Coalfields Ltd and South Eastern Coalfields Ltd in October November and December 2017 and admitted by KSEBL during **November 2019 by KSEBL, while truing up the accounts for 2019-20**. KSEBL, in line with the submission in truing up petition, further request that the Hon'ble Commission may kindly approve truing up of unpreferred claims, if any, materializes on a later date.

VI. Normative loan and interest thereon

47. While truing up accounts for 2017-18, the normative loan considered by the Hon'ble Commission did not take into account a claim already disputed before the Hon'ble APTEL in the matter of determination of normative loan as on

01.04.2015 . Further, Fixed assets additions worth Rs.99.54 Cr and Rs. 41.79 Cr was not approved for 2016-17 and 2017-18 respectively. Depreciation for 2017-18 was approved at Rs.353.47 Cr against Rs.520.47 Cr claimed by KSEBL. Thus, opening normative loan and closing normative loan for the year as considered by KSERC were less by Rs. 567.12 Cr and Rs.400.12 Cr respectively Reconciliation of normative loan as per KSEBL and as approved by the Hon'ble Commission is detailed below.

Table 3: Reconciliation Normative loan as on 31.03.2018 (Rs Cr)

Sl No	Particulars	SBU G	SBU T	SBU D	Total
1	As per TU petition filed by KSEBL	889.69	1044.26	1476.48	3410.43
2	Less: Disputed claim pending before APTEL	135.23	131.21	201.16	467.60
3	Less:2016-17-GFA claim not approved	91.31	4.89	3.34	99.54
4	Less: 2017-18-GFA claim not approved	46.24	-4.45	0.00	41.79
5	Add: Normative depreciation for 2017-18 claim over approval- On opening GFA	10.87	4.62	167.66	183.15
6	As per Truing up order	627.78	917.23	1439.64	2984.65

48. It may kindly note that the variation in claim and approval is mainly due to the disputed claim. The matter of under determination of normative loan has been sought for review in the year 2015-16 and 2016-17. But the Hon'ble Commission did not consider it favorably. In view of the same and due to the pendency of the matter before the Hon'ble APTEL, KSEBL is not seeking review on the same matter again. It is humbly prayed that reliefs if any, granted by the Hon'ble APTEL in Appeal 27/2021 and 31/2021 pertaining to 2015-16 and 2016-17 may kindly be extended for the year 2017-18 as well.

49. Hon'ble Commission, as per paragraph 2.165 of the order has given an alternate method through which, the normative loan as on 01.04.2015 would be Rs.1004.17 Cr instead pf the approved normative loan of Rs.2276.17 Cr. In this connection, KSEBL humbly submits the following for the kind consideration of the Hon'ble Commission:

(i) KSEBL did not raise any quarrel on the methodology adopted by the Hon'ble Commission in determining the normative loan as on 01.04.2015 as per the true up order for 2015-16. Sole argument was that instead of considering depreciation actually approved and made pass through in tariff (Rs. 5445.85 Cr) which works out to 37.25% of Gross fixed assets, Hon'ble Commission considered Rs.6135.25 Cr being 42% of Gross Fixed assets (inclusive of claw back portion).

(ii) Thus, KSEBL has raised only an error apparent with regard to the amount of depreciation approved till 31.03.2015 considered in tabulation and sought its rectification, thereby sought to ensure that correct values ie. The depreciation actually approved and made pass through in tariff till 01.04.2015 are considered in the tabulation. KSEBL requested the Hon'ble Commission to consider the depreciation actually allowed as per orders, and made pass through in tariff, as normative repayment. Thus, only an error apparent on face of records was raised.

(iii) By considering the actual depreciation at 37.25%, the normative loan repayment considered in tabulation will be less to the extent of claw back depreciation (Rs.689.40 Cr). At the same time, fund available as depreciated contribution will be higher (Rs. 221.75 Cr) than the figure considered in the tabulation. Due to the mistake, normative loan entitlement of the appellant has been approved less to the extent of Rs.467.60 Cr.

50. In other words, actually approved depreciation (37.25%) should have been considered as loan repayment in strict compliance of Regulation 30(2) and contribution and grants is also to be depreciated at 37.25 % to arrive at depreciated contribution. It is humbly submitted that the claim of KSEBL was strictly in line with the computation methodology adopted by the State Commission in line with regulation 30(2) of the Tariff Regulation, 2014.

51. The methodology adopted by the Hon'ble Commission to determine normative loan in line with Tariff Regulation and its logical sequence were explained in detail as per paragraph 133 to 139 of the truing up order for 2015-16. Now, Hon'ble Commission has given a tabulation, which is in total deviation to the methodology deliberated and adopted in the true up order for 2015-16, arriving at the normative loan at Rs.1004.17 Cr.

52. It is respectfully submitted that prior to the control period from 2015-16, ARR and True up were approved by the Hon'ble Commission based on actuals subject to prudence check. During the said period, normative loan, carrying cost, working capital interest etc were not approved. Since the notification of Tariff Regulation, 2014, consistency was brought about due to the prescription of norms for approval.

53. Redetermination of normative loan as on 01.04.2015 as pointed out in paragraph 2.165 of the order amounts to re-opening of settled positions in the past. If the same is proposed to be done, all aspects are required to be reopened especially with regard to loans. Actual loans in the past were considerably reduced due to the use of internal accruals. Only actual interest

was approved in those years. Neither interest nor RoE was approved for such internal accruals. Therefore, in the interest of justice, it is genuinely expected that Hon'ble Commission is not unsettling the settled positions over a long period.

VII. Employee cost:

54. While deliberating employee cost, Hon'ble Commission has made certain observations leading to apparent errors as per records of KSEBL. KSEBL submits clarification on the same as detailed below for the kind consideration of the Hon'ble Commission.

    Paragraph 2.42 of the order: The Commission examined details furnished by KSEB Ltd and notes that it is partial, did not consider the effect of computerization, introduction of new technology or its upgradation, staff rationalization or even the recommendations of IIM Study commissioned by KSEB Ltd themselves. Further the reply furnished were not fully in line with the details sought by the Commission. Hence, the Commission could not consider the details furnished by KSEB Ltd as required. Hence, the Commission proceeds to approve the employee cost as per the directions of Hon. High Court of Kerala as has been done in 2015-16 and 2016-17.

55. On the basis of these observations, Hon'ble Commission as per paragraph 2.48 asserts that the allowable employee cost for the year is to be determined as per the judgment of Hon'ble High Court of Kerala and APTEL. Hence, a deviation from the directions of above Courts is not possible.
56. It is humbly submitted that KSEBL had furnished full and complete details as sought by the Hon'ble Commission. Hon'ble Commission, as per letter dated 28-05-2020 had sought copy of the orders sanctioning posts in KSEB/ KSEBL as extracted below:

    Item no. 2. KSEB Ltd has sought approval of actual employee cost for the year 2017-18. The Commission has decided to consider the same. In order to facilitate this process, KSEB Ltd may make available the following documents:
    a. Copy of all Kerala Government orders sanctioning posts in Kerala State Electricity Board from 1.4.2009 to 31.10.2013 i.e., for the prior period to re vesting of the Board under section 131 of the Electricity Act.
    b. Full Board resolutions of KSEB Ltd sanctioning posts in KSEB Ltd from 1.11.2013 to 31.03.2018.

57. In response, KSEBL had furnished copy of orders sanctioning posts together with tabulation and explanations on all aspects connected with the Need Based staff Strength (NBS) from 2000 onwards. It may kindly be noted that no query connected with the effect of computerization, introduction of new technology

or its upgradation, staff rationalization or the recommendations of IIM Study commissioned by KSEB Ltd was raised in the letter dated 28.05.2020. Hon'ble Commission may be pleased to reconsider the observations made in paragraph 2.40 of the order and recognize that details furnished by KSEBL are full and complete in accordance with details sought vide letter dated 28.05.2020. Further, reply /explanations together with copies of the order were furnished strictly in line with the details sought by the Hon'ble Commission.

58. In paragraph 2.49, it is observed by the Hon'ble Commission that the benchmarks and comparisons given by KSEB Ltd is incomplete as per the submissions of KSEB Ltd. Accordingly, Hon'ble Commission recorded that drawing conclusion from such comparison is also not meaningful.

59. In paragraph 5.42.18 of the truing up petition, KSEBL had specifically mentioned that the comparisons were taken from **All India Electricity Statistics-General Review 2018 (containing data for the year 2016-17)** published by **Central Electricity Authority.** Certain information in respect of some DISCOMs was not available in the said report and the fact thereof was correctly brought before the Hon'ble Commission. However, it remains a fact that the report brought out by CEA, which is a statutory authority, provides is the largest source of information and it represents a fair picture of the power industry of India.

60. It was further observed by the Hon'ble Commission that the employee per 1000 consumers presented is not inclusive of the temporary/contract staff employed by KSEB Ltd and hence the ratio does not reveal the full picture. Hon'ble Commission may kindly note that the observation is an apparent error since comparison can be done only among comparable factors. The employee details provided in the CEA report consists of only regular employees and as such it would be meaningless to include the number of contract employees in Kerala alone along with it. It may also be noted that outsourcing and contractual employment is more prevalent in other states than in Kerala and if the same is included in report for all states, the indices of KSEBL will only improve. Contract employee strength can be compared only if similar information pertaining to other states are also available in the report of CEA. Such information was not available in the CEA report cited. It is humbly submitted that the cost towards contract employees does not form part of employee cost and KSEBL fully disclosed the data contained in the report and did not conceal any information from the Hon'ble Commission.

61. It was noted in the order that while comparing the number of consumers exclusion of agricultural pump sets is not justifiable since the said category accounts for a substantial share of total consumers in other States. It is

respectfully submitted that the pump set connections were excluded primarily because of unmetered nature, limited hours of supply which is controlled at HT feeders etc. Being unmetered, the man power required for meter reading, billing and collection are not required for such connections. Also, since hours of supply are regulated at HT feeder level, number of employees to meet the standards of performance, as in the case of other categories of consumers, are not required in the case of pump sets. As per Truing up petition, it was claimed that Kerala ranked 10^{th} among 37 States / UTs. It may kindly be seen from Appendix 15 in Chapter 5 of the petition that even if pump set connections are also considered Kerala would rank 11^{th} among all States and UTs.

62. Hon'ble Commission further observed that the employees per circuit km ratio of KSEB Ltd is high and is not comparable with other similarly placed States. It may kindly be noted that the analysis based on CEA reveals that 0.096 employees per ckt km of distribution line length in Kerala against national average of 0.095. As per details are furnished in **Appendix 19**, it may be seen that Kerala ranks 9^{th} among 15 States for which data are available in the report.

63. In paragraph 2.55 and 5.122 or the order, Hon'ble Commission observed as follows:

    Thus, the Commission is required to approve the employee cost of KSEB Ltd as per the direction of the Hon. High Court of Kerala, with reference to the Order of APTEL in Appeal Nos. 1 and 19 of 2013. It is also to be noted that APTEL has affirmed the said decision for the truing up of accounts of KSEB Ltd till 2013-14 ***as per the request of KSEB Ltd themselves****.*

64. It is respectfully submitted that the observation of the Hon'ble Commission on the Hon'ble APTEL judgment dated 27.04.2016 in Appeal No 81 of 2014 with regard to the request by KSEBL is also an apparent error. The relevant portion of judgment of the Hon'ble APTEL is extracted below for ready reference:

    3) It is not disputed between the parties that all the issues involved in this appeal are covered by the judgment dated 10.11.2014 in Appeal No.1 of 2013 and 19 of 2013, passed by this Appellate Tribunal, between the same parties, wherein this Appellate Tribunal had directed the respondent, State Commission to consider the relevant points mentioned in the judgment in the true up petition. It is also an admitted fact that the appellant had filed the true up petition before the learned State Commission which is pending for adjudication. The learned counsel for the Commission candidly states that all the directions given by this Appellate Tribunal in the judgment dated 10.11.2014 shall be considered while deciding the true up petition for the period in question.

65. In paragraph 5.126 of the order, Hon'ble Commission observed as follows:

5.126 The Commission also notes that both as a departmental undertaking prior to 31-10-2013 and as a PSU thereafter, there are due procedures to be followed for creation of posts. No person can be recruited or posted in a non-existent post. However, KSEB Ltd has not furnished any full Board Sanction Order regarding creation of any new post since 01-11-2013.

66. It is humbly submitted that all the orders, under which posts were sanctioned till 31.10.2013, furnished before the Hon'ble Commission as per letter dated 20.10.2020 were either approved by the Full Time Members (FM) or Full Board (FB). It was also submitted that KSEB was not required to obtain sanction from the Government for the creation of posts as KSEB was established as a statutory body as per the Section-5 of the Electricity (Supply) Act-1948. Therefore, it is amply clear that the creation of posts in KSEB was done strictly by the authority competent to do so. After 01.11.2013, the office restructuring and corporatization places were sanctioned by the Director Board of KSEBL.

67. KSEBL has also brought to the attention of the Hon'ble Commission that the staff strength of different categories was streamlined as per requirement and 2722 surplus places identified and shelved (BO 1573/2005 dated 10.05.2005) to arrive at the need-based strength of 30442 nos. Thus, it is amply clear that, through the exercise carried out in 2002, the approved staff strength was reduced and the process did not result in sanctioning of additional work force. Therefore, it may kindly be seen that the places in KSEB were fixed as per due process and staffing done only against approved places.

68. It was observed that *"It is also to be understood that even those posts created but not filled up in and remained vacant for a continuous period of one year is treated as lapsed and to fill up this posts, fresh creation and sanction of the post by the competent authority i.e., the Full Board of Directors of KSEB Ltd is essential. Otherwise, such creations and filling up are treated as irregular and unauthorized".*

69. It is respectfully submitted that, as per rules and regulations applicable to KSEBL, there is no provision with regard to the lapse of sanctioned place as pointed out by the Hon'ble Commission. The recruitment in KSEBL is done through PSC and there are delays from 3 to 4 years in filling vacancies notified to PSC. It may also be seen that the vacant place will not remain at a definite place continuously as these are filled during promotion and transfer. Thus, the

vacant position revolves among offices due to which vacancy remaining continuously unfilled for long time is quite remote. Hon'ble Commission may kindly note that there are numerous other reasons for non-filling of places. Court cases connected with various service matters like seniority etc could also hamper timely filling of vacancies. Such places and posts can be filled only after the conclusion of litigation.

70. Kind attention of the Hon'ble Commission is also invited to the public hearing in the matter of Draft Tariff Regulations for the control period from 2022-23 to 2026-27, during the course of which, Hon'ble Commission was pleased to mention that the Commission is bound to approve employee cost based on orders furnished by KSEBL. KSEBL is duty bound to furnish any further details/ explanation, as may be considered appropriate by the Hon'ble Commission, to this end.

71. In view of the above, KSEBL is fervently appeal before the Hon'ble Commission to re consider the order in view of the details furnished above.

Prayer

Considering the reasons, facts and circumstances on the matters as detailed in the paragraphs above, KSEBL requests before the Hon'ble Commission to kindly review the order dated 25th June, 2021 in Petition OA No. 9 of 2020 in the matter of 'Truing Up of accounts of KSEB for the year 2017-18 on the items as detailed above in the petition.

Chief Engineer
Commercial & Tariff

Appendix 1 Statement showing ARU wise comparison of truing up sought and approved for 2017-18 (Rs. Cr)`													
		2017-18 KSEBL TU Petition				KSERC Order				Variation between claim & approval			
No	Particulars	SBU G	SBU T	SBU D	Total	SBU G	SBU T	SBU D	Total	SBU G	SBU T	SBU D	Total
1	Generation (SBU-G)			581.91	581.91			497.50	497.50			84.41	84.41
2	Power Purchase			6856.15	6856.15			6805.63	6805.63			50.52	**50.52**
3	Cost of Inter-State Transmission			542.52	542.52			542.52	542.52			0.00	0.00
4	Cost of Intra-State Transmission (SBU-T)			881.87	881.87			765.77	765.77			116.10	116.10
5	Generation of power	2.08			2.08	2.08			2.08	0.00		0.00	0.00
6	**Interest & Financial Charges**												
9	Net interest	87.75	91.02	138.93	317.70	65.91	80.56	125.15	271.63	21.84	10.46	13.78	46.07
10	Interest on GPF	8.23	15.46	132.57	156.26	8.23	15.46	132.57	156.26	0.00	0.00	0.00	0.00
11	Other interest	0.76	0.49	5.58	6.83	0.76	0.49	5.58	6.83	0.00	0.00	0.00	0.00
12	Interest on Master Trust	42.90	80.55	690.95	814.40	42.90	80.55	690.95	814.40		0.00	0.00	0.00
13	Int on SD	0.00	0.00	174.95	174.95			174.95	174.95			0.00	0.00
14	Working capital interest	7.07	17.23		24.30	6.47	8.04		14.51	0.60	9.19	0.00	9.79
18	Carrying cost			444.49	444.49			344.75	344.75	0.00	0.00	99.74	99.74
	Carrying cost on current year gap			61.12	61.12			3.80	3.80	0.00	0.00	57.32	57.32
16	Total I&F	**146.71**	**204.75**	**1648.59**	**2000.05**	**124.27**	**185.10**	**1129.20**	**1787.12**	**22.44**	**19.65**	**519.39**	**212.93**
15	Interest on un funded liability	27.99	52.56	450.84	531.39	10.54	19.78	169.68	200.00	**17.45**	**32.78**	**281.16**	**331.39**
17	Depreciation	**143.48**	**156.36**	**236.78**	**536.62**	**132.61**	**151.74**	**69.12**	**353.47**	**10.87**	**4.62**	**167.66**	**183.15**
20	Employee cost	168.82	288.66	2071.51	2528.99								
21	Less: Capitalized	52.05	41.20	239.98	333.23								
22	Balance	116.77	247.47	1831.53	2195.76	104.43	221.24	1637.34	1963.01	12.34	26.23	194.19	232.75
23	R&M expenses	29.30	42.27	205.77	277.34	20.99	74.73	225.92	321.64	8.31	-32.46	-20.15	-44.30
24	A&G expenses	28.56	84.19	289.96	402.71				0.00	28.56	84.19	289.96	402.71
25	Less: Capitalized	3.45	1.49	-0.81	4.13				0.00	3.45	1.49	-0.81	4.13
26	Balance	25.11	82.70	290.77	398.58	4.86	17.41	94.96	117.24	20.25	65.29	195.81	281.34
27	O&M New stations					8.08			8.08	-8.08	0.00	0.00	-8.08
28	O&M Expenses	**171.18**	**372.44**	**2328.07**	**2871.68**	**138.36**	**313.39**	**1958.22**	**2409.96**	32.82	59.05	369.85	461.72
29	**Return on equity**	**116.38**	**119.99**	**253.50**	**489.87**	**116.38**	**119.99**	**253.50**	**489.87**	0.00	0.00	0.00	0.00
30	Other Expenses & PP expenses	-0.92	3.84	-17.09	-14.17	-0.92	3.84	-23.14	-20.22	0.00	0.00	6.05	6.05
31	Aux consumption					-0.83			-0.83	0.83	0.00	0.00	0.83
32	Claim for T&D loss target			49.27	49.27			48.17	48.17		0.00	1.10	1.10
33	Total ARR	**606.90**	**909.93**	**13812.41**	**13865.46**	**522.49**	**793.83**	**12564.72**	**12617.78**	**84.41**	116.10	**1247.69**	**1247.68**
34	Less Tariff Income			11967.05	11967.05			11967.05	11967.05	0.00	0.00	0.00	0.00
36	Less Non-Tariff Income	24.99	28.06	513.55	566.60	24.99	28.06	513.55	566.60	0.00	0.00	0.00	0.00
37	Total ERC/ Transfer price	**581.91**	**881.87**	**12480.60**	**12533.65**	**497.50**	**765.77**	**12480.60**	**12533.65**	**84.41**	**116.10**	**0.00**	**0.00**
38	**Revenue Gap**			**1331.81**	**1331.81**			**84.13**	**84.13**			**1247.68**	**1247.68**